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Jusninawati bt Abdul Ghani v Public Prosecutor

B FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–275–11 OF 2017(W)
ALIZATUL KHAIR, ROHANA YUSUF, MOHD ZAWAWI, TENGKU MAIMUN AND IDRUS HARUN FCJJ
18 OCTOBER 2019

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Criminal Procedure — Charge — No offence disclosed — Police officer found guilty and sentenced to jail for intentionally omitting to disclose information about possible commission of a s 130JA of the Penal Code terrorist offence — Essential ingredient of charge against accused was that she was legally bound to disclose the D *information — Whether when alleged offence by accused committed applicable provision was pre-amended s 13(1)(a) of the Criminal Procedure Code — Pre-amended s 13(1)(a) required any person aware of commission of, or intention of any other person to commit, any offence punishable under certain specified sections of Penal Code to disclose such information — Whether s 130JA* E *offence was not one of the specified offences under the pre-amended s 13(1)(a) — Whether accused therefore charged and convicted for an offence not known to law*

F *Statutory Interpretation — Construction of statutes — Penal statute — Whether criminal and penal statutes had to be strictly construed so as not to limit or interfere with citizen's personal liberty unless such was intended in clear and unambiguous terms — Whether no act or omission could be deemed criminal unless clearly made so by words of statute concerned — Whether unless contrary* G *intention appeared Parliament could not have intended pre-amended s 13(1)(a) of the Criminal Procedure Code to impose legal obligation on public to furnish information about possible commission of a s 130JA of the Penal Code offence*

H The appellant, a police corporal, was sentenced to seven years' jail by the High Court after being found guilty of intentionally omitting to disclose information — which she was legally bound to disclose — to the authorities about a plan by two of her acquaintances ('SP1' and 'SP2') to travel to Syria to join the Islamic State ('IS') terrorist group to carry out terrorist acts ('the information'). The appellant was alleged to have committed the offence I between August 2015 and March 2016. Her defence to the charge was simply that she did not report the information because she thought it was just 'empty talk'. The evidence showed that the appellant herself had often communicated with several IS militants on social media and sympathised with their cause. After considering the pre-amended s 13(1)(a) of the Criminal Procedure Code

('the CPC') and relevant provisions of the Police Act 1967, the High Court held, inter alia, that the appellant had a legal obligation to disclose the information to the authorities. Although the Court of Appeal ('COA') affirmed the conviction and sentence on appeal, it did not agree with the High Court's view that the appellant had a legal obligation to disclose the information under the pre-amended s 13(1)(a) of the CPC. Before it was amended on 23 December 2016, s 13(1)(a) of the CPC required any person aware of the commission of, or the intention of any other person to commit, any offence punishable under certain specified sections of the Penal Code, to give information about the same to the authorities. Section 130JA of the Penal Code — which made it an offence for any person to travel to, through or from Malaysia with intent to travel to a foreign country for the purpose of committing a terrorist act in a foreign country — was not among the offences specified under the pre-amended s 13(1)(a) of the CPC. The COA, however, held that the error was not fatal since there were other statutes, such as the Police Act 1967, that legally obliged the appellant to report the information. The sole issue in the instant appeal against the COA's decision was whether the appellant had a legal obligation to disclose the information.

Held, allowing the appeal, setting aside the appellant's conviction and sentence and acquitting and discharging her of the charge under s 130M of the Penal Code:

(1) The appellant was not obliged to report the information concerned. The old s 13(1)(a) of the CPC — which was the provision applicable in this case — imposed a duty on every person, including the appellant, who was aware of the commission of the offences enumerated in that section, to give information to the nearest police station or police officer or *penghulu*. Once there was an omission, such persons became criminally liable. The offence under s 130JA of the Penal Code ('the PC') was not one of the offences mentioned in the old s 13(1)(a) of the CPC (see para 26).

(2) Criminal and penal statutes had to be strictly construed and no act or omission was to be deemed criminal unless it was clearly made so by the words of the statute concerned. The language in criminal and penal statutes could not be enlarged beyond their ordinary meaning in order to carry into effect the general purpose for which the statute was enacted. Parliament was presumed not to have intended to limit or interfere with the personal liberty of a citizen unless such intention was indicated in clear, unmistakable and unambiguous terms. Unless the contrary intention appeared, Parliament could not have intended under the old s 13(1)(a) of the CPC to impose a legal obligation on persons to furnish information in respect of the possible commission of a s 130JA offence. Hence, the prosecution of the appellant under s 130M of the PC for not reporting the possible commission of a s 130JA offence by SP1 and SP2

was unsustainable in law. The prosecution did not adduce any evidence concerning the appellant's scope of work or any evidence to show that she had been directed to gather evidence on terrorist-related activities and to transmit the same to her superiors. The appellant was therefore charged and convicted for an offence not known to law (see paras 27–28 & 31).

(3) The Court of Appeal was wrong in affirming the decision of the High Court. It was a serious error that warranted appellate intervention. The definition of 'legally bound' in s 43 of the PC was a negative test, ie, the word 'illegal' applied to everything which was an offence or which was prohibited by law or which furnished a ground for a civil action; and, a person was said to be 'legally bound to do' whatever it was illegal in him to omit (see paras 18–19 & 31–32).

(4) Since the appellant was alleged to have committed the offence before the amendment to s 13(1)(a) of the CPC took effect on 23 December 2016, the amended s 13(1)(a), which was in the form of substantive law, did not apply retrospectively to affect the appellant (see para 22).

[Bahasa Malaysia summary

Perayu, seorang korporal polis, telah dihukum penjara selama tujuh tahun oleh Mahkamah Tinggi setelah didapati bersalah kerana dengan niat tidak memberikan maklumat — yang dia terikat dari segi undang-undang untuk beri — kepada pihak berkuasa tentang rancangan dua kenalannya ('SP1' dan 'SP2') untuk pergi ke Syria dan menyertai kumpulan pengganas Islamic State ('IS') untuk menjalankan perbuatan pengganas ('maklumat tersebut'). Perayu dikatakan telah melakukan kesalahan antara Ogos 2015 dan Mac 2016. Pembelaannya terhadap pertuduhan adalah hanya kerana dia tidak melaporkan maklumat tersebut kerana dia memikirkan ia hanya 'cakap kosong'. Keterangan menunjukkan bahawa perayu sendiri sentiasa berhubungan dengan beberapa militan IS di media sosial dan bersimpati dengan perjuangan mereka. Setelah mempertimbangkan pra pindaan s 13(1)(a) Kanun Tatacara Jenayah ('KTJ') dan peruntukan relevan Akta Polis 1967, Mahkamah Tinggi memutuskan, antara lain, bahawa perayu mempunyai tanggungjawab dari segi undang-undang untuk memberi maklumat kepada pihak berkuasa. Walaupun Mahkamah Rayuan ('MR') mengesahkan sabitan dan hukuman atas rayuan, ia tidak bersetuju dengan pendapat Mahkamah Tinggi bahawa perayu mempunyai tanggungjawab dari segi undang-undang untuk memberi maklumat tersebut di bawah pra pindaan s 13(1)(a) KTJ. Sebelum ia dipinda pada 23 Disember 2016, s 131(1)(a) KTJ menghendaki mana-mana orang yang menyedari perlakuan, atau niat mana-mana orang lain untuk melakukan, apa-apa kesalahan yang oleh dihukum di bawah seksyen-seksyen spesifik tertentu Kanun Keseksaan, untuk memberikan maklumat tentang yang sama kepada pihak berkuasa. Seksyen 130JA Kanun Keseksaan — yang menjadikannya satu kesalahan untuk mana-mana orang untuk perjalanan ke, melalui atau dari Malaysia

dengan niat untuk berjalan ke negara asing bagi tujuan melakukan perbuatan pengganas di negara asing — bukan antara kesalahan spesifik di bawah pra pindaan s 13(1)(a) KTJ. MR, bagaimanapun, memutuskan bahawa kekhilafan itu tidak mudarat kerana terdapat statut lain, seperti Akta Polis 1967, yang mewajibkan dari segi undang-undang untuk perayu melaporkan maklumat tersebut. Satu-satunya isu dalam rayuan ini terhadap keputusan MR adalah sama ada perayu mempunyai tanggungjawab dari segi undang-undang untuk memberikan maklumat tersebut.

Diputuskan, membenarkan rayuan, mengetepikan sabitan dan hukuman perayu dan melepas dan membebaskannya daripada pertuduhan di bawah s 130M Kanun Keseksaan:

(1) Perayu tidak wajib untuk melaporkan maklumat yang berkaitan. Seksyen 13(1)(a) KTJ yang lama — yang merupakan peruntukan yang terpakai dalam kes ini — mengenakan kewajipan ke atas setiap orang, termasuk perayu, yang menyedari perlakuan kesalahan-kesalahan yang disebutkan dalam seksyen tersebut, untuk memberikan maklumat kepada balai polis terdekat atau pegawai polis atau penghulu. Apabila terdapat peninggalan, orang-orang sebegini menjadi bertanggungjawab secara jenayah. Kesalahan di bawah s 130JA Kanun Keseksaan ('KK') bukan salah satu kesalahan yang disebutkan dalam s 13(1)(a) KTJ yang lama (lihat perenggan 26).

(2) Statut-statut jenayah dan keseksaan hendaklah ditafsir dengan ketat dan tiada perbuatan atau peninggalan dianggap jenayah kecuali ia jelas dibuat sedemikian berdasarkan kata-kata statut berkenaan. Bahasa dalam statut jenayah dan keseksaan tidak boleh diperluaskan menjangkau maksud biasanya bagi tujuan melaksanakan tujuan am yang mana statut itu digubal Parlimen dianggap tidak berniat untuk mengehadkan atau campur tangan dengan kebebasan peribadi warganegara kecuali niat tersebut dinyatakan dalam terma yang jelas, tidak silap dan tidak taksa. Kecuali jika wujud niat bertentangan, Parlimen tidak mungkin berniat di bawah s 13(1)(a) KTJ yang lama untuk mengenakan tanggungjawab dari segi undang-indang ke atas seseorang itu untuk mengemukakan maklumat berkaitan kebarangkalian perlakuan satu kesalahan s 130JA. Justeru, pendakwaan perayu di bawah s 130M KK kerana tidak melaporkan kebarangkalian perlakuan suatu kesalahan s 130M oleh SP1 dan SP2 adalah tidak mapan dari segi undang-undang. Pendakwaan tidak mengemukakan apa-apa keterangan berkaitan skop kerja perayu atau apa-apa keterangan untuk menunjukkan abhawa dia telah diarahkan untuk mengumpul keterangan berhubung kegiatan berkaitan pengganas dan untuk menyebarkan yang sama kepada ketuanya. Perayu dengan itu telah dituduh dan disabitkan kerana kesalahan yang tidak dikenali oleh undang-undang (lihat perenggan 27–28 & 31).

(3) Mahkamah Rayuan terkhilaf kerana mengesahkan keputusan Mahkamah Tinggi. Ia adalah kekhilafan serius yang mewajarkan campur tangan rayuan. Definisi 'terikat di sisi undang-undang' dalam s 43 KK adalah suatu ujian negatif, iaitu perkataan 'illegal' terpakai kepada semua yang merupakan kesalahan atau yang dilarang oleh undang-undang atau yang dikemukakan atas alasan untuk tindakan sivil; dan seseorang dikatakan 'di sisi undang-undang terikat untuk melakukukan' apa-apa yang menyalahi undang-undang untuknya meninggalkan (lihat perenggan 18–19 & 31–32).

(4) Oleh kerana perayu dikatakan telah melakukan kesalahan sebelum pindaan s 13(1)(a) KTJ berkuat kuasa pada 23 Disember 2016, s 13(1)(a) yang dipinda, yang mana dalam bentuk undang-undang substantive, tidak terpakai secara kebelakang untuk menjejaskan perayu (lihat perenggan 22).]

Cases referred to

Akbaruddin Owaisi v The Government of Andhra Pradesh [2014] CriLJ 2199, HC (refd)
Chiew Poh Kiong v PP [2001] 4 MLJ 280; [2001] 7 CLJ 249, HC (refd)
Dalip Bhagwan Singh v PP [1998] 1 MLJ 1; [1997] 4 CLJ 645, FC (refd)
Dr Satyasaheel Nandlal Naik vs State of Maharashtra And Another [1996] CriLJ 1463, HC (refd)

Legislation referred to

Code of Criminal Procedure [IND] s 39
Criminal Procedure Code ss 13(1)(a), 103, 104
Evidence Act 1950 s 114(g)
Indian Penal Code [IND] ss 279, 337, 338, 304A
Penal Code ss 43, 130JA, 130M
Police Act 1967 ss 3(3), 20(3)

Appeal from: Criminal Appeal No W-06A(SH)-13–12 of 2016 (Court of Appeal, Putrajaya)

Farida bt Mohammad (Farida & Co) for the appellant.
Faizah bt Mohd Salleh (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Mohd Zawawi FCJ (delivering judgment of the court):

INTRODUCTION

[1] The appellant was charged and tried at the Kuala Lumpur High Court for an offence of omitting to disclose information pertaining to a terrorist act.

The charge read as follows:

> Bahawa kamu, di antara bulan Ogos 2015 sehingga 22 Mac 2016, di Balai Polis Petaling Jaya, di Ibu Pejabat Daerah Petaling Jaya, dalam Daerah Petaling, dalam Negeri Selangor, yang mempunyai sebab untuk mempercayai bahawa suatu perbuatan keganasan iaitu kesalahan yang boleh dihukum di bawah seksyen 130JA Kanun Keseksaan akan dilakukan, meninggalkan dengan sengaja daripada memberi apa-apa maklumat berkenaan dengan kesalahan itu, yang kamu terikat di sisi undang-undang untuk memberi, dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 130M Kanun yang sama.

[2] After full trial, the High Court found the appellant guilty and sentenced her to seven years imprisonment, the maximum term allowed by law. The sentence was ordered to run from the date of her arrest ie on 22 March 2016. The conviction and sentence were upheld by the Court of Appeal on 8 November 2017. Aggrieved by the impugned conviction and sentence, the appellant has now appealed to this court.

[3] We have heard learned counsel for the appellant and learned deputy public prosecutor ('DPP') at some length. We have also perused the written submissions carefully and examined the records available before us in its entirety. For the reasons that follow, we found that there was merit in this appeal and accordingly we allowed the appellant's appeal and quashed the conviction and sentence.

FACTUAL BACKGROUND AND THE ANTECEDENT PROCEEDINGS

[4] Briefly stated, the case against the appellant was that she possessed information about the plans of two individuals ie Nor Azimah bt Adnan ('SP1') and one Abdul Ghani bin Yaacob to travel to Syria and to commit terrorist acts by joining the military movement of the Islamic State ('IS'). The appellant was alleged to have been in possession of this information as early as August 2015. However, she withheld the information from her superiors. The prosecution adduced evidence that Abdul Ghani bin Yaacob had travelled to Syria and was killed in a battle at the Al Khair province.

[5] The appellant was a policewoman with the rank of corporal, stationed at the Petaling Jaya District Police Headquarters. She was allegedly drawn to the conflict in Syria via Facebook in 2013. She also had networking ties with several other IS militants such as Abu Syamil and Fudhail Omar through social media platforms. She was reprimanded and advised by an officer from the Bukit Aman Special Branch not to be involved with the terrorist group.

[6] At the trial, it was established that sometime in August 2015, the appellant was informed by her Facebook acquaintance, Nor Azimah bt Adnan ('SP1'), also nicknamed Umi Diyana, of her impending marriage to Abdul Ghani bin Yaacob and their travel plans to Syria to join the IS which was a terrorist related offence punishable under s 130JA of the Penal Code. Abdul Ghani was known as 'Abu Kedah' among the members of IS.

[7] Sometime in September 2015, SP1 arranged for the appellant to meet with 'Abu Kedah' and during the said meeting, 'Abu Kedah' had informed the appellant of his intention to travel to Syria with SP1. SP1 testified that she had received a text message from 'Abu Kedah' through 'Whatsapp' application informing SP1 that the appellant had also aspired to go to Syria but her intention was aborted due to financial problems. SP1's plan to travel to Syria did not materialise because her marriage with 'Abu Kedah' only lasted for five days and she was involved in a road accident in November 2015.

[8] The appellant's cautioned statements were tendered and marked as exhs P6(a)–P6(e). It was stated in those statements that the appellant had utilised social media platforms such as Facebook and Telegram to communicate with other IS members; and she was being informed by 'Abu Kedah' of his plan to take SP1 to Syria. However, the appellant did not report the information to her superior officers since she regarded Abu Kedah's plans as 'empty talk'.

FINDINGS OF THE HIGH COURT

[9] The offence with which the appellant was charged is provided under s 130M of the Penal Code which reads as follows:

> 130M Intentional omission to give information relating to terrorist
>
> Whoever knowing or having reason to believe that any offence punishable under sections 130C to 130L has been or will be committed intentionally omits to give any information respecting that offence, which he is legally bound to give, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

[10] At the close of the prosecution's case, the learned judicial commissioner ('JC') was satisfied that a prima facie case had been established against the appellant. His Lordship found the following essential ingredients of the offence to have been proven by the prosecution:

(a) that the appellant had reasons to believe that a terrorist act would be committed;

(b) that she had omitted to give that information in respect of the s 130JA offence; and

(c) that she was legally bound to give information in respect of the s 130JA offence.

[11] The learned JC held that the prosecution had adduced credible evidence to prove that the appellant had reasons to believe that a terrorist act would be committed. In point of fact, 'Abu Kedah' had gone to Syria in December 2015 after divorcing his wife and was killed in battle in April 2016. The learned JC had accepted the evidence of the investigating officer ('SP4') that the appellant had failed to transmit the information given to her by SP1. As for the third element, the learned JC had referred to s 13(1)(a) of the Criminal Procedure Code ('the CPC'), ss 3(3) and 20(3) of the Police Act 1967 (Revised 1988) and held that the appellant, as a trained police personnel, was legally bound to collect information on terrorist group, process it and hand it over to the authorities.

[12] When called upon to enter her defence, the appellant elected to give an unsworn statement from the dock and did not call any witness. In a nutshell, the appellant had denied the charge against her and explained that she did not report the information received because she regarded the information as 'empty talk' since it was not easy to enter Syria and it would incur substantial costs.

[13] Having considered the appellant's unsworn statement, the learned JC found that her explanation did not raise any reasonable doubt in the prosecution's case. The appellant's explanation was rejected by the learned JC and His Lordship was of the view that the appellant, who was a trained police personnel, had no excuse at all not to report the information received. The learned JC was of the opinion that the issue about the difficulty of travelling to Syria did not arise as the appellant was in communication with several 'Daesh' militant members who were already there.

FINDINGS OF THE COURT OF APPEAL

[14] Being aggrieved with the decision, the appellant filed an appeal to the Court of Appeal. 11 grounds of appeal were raised by the appellant in assailing the learned JC's decision but the focus of counsel's argument was on the following issues:

(i) that in the circumstances of the case, the appellant could not have had reasons to believe or the knowledge that a terrorist act would be committed;

(ii) that the appellant had no legal obligation to give information under s 13(1)(a) of the CPC, relating to the commission of the offence punishable under s 130JA of the PC because s 13(1)(a) of the CPC makes no reference to s 130JA of the PC; and

(iii) that presumption of adverse inference under s 114(g) of the Evidence Act 1950 should have been invoked against the prosecution for failing to adduce forensic reports and/or digital evidence that points to a possibility of Facebook and/Telegram networking ties that the appellant has with the 'Daesh' militant members.

[15] The Court of Appeal had unanimously dismissed the appellant's appeal and affirmed the conviction and sentence. In arriving at its findings, the Court of Appeal held that the learned JC had duly complied with the procedural requirement of subjecting the prosecution's evidence to a maximum evaluation based largely on the credibility and reliability of witnesses. In the circumstances of the case, the Court of Appeal found that the appellant must have had 'reasons to believe' that a terrorist act would be committed. The Court of Appeal went further to hold that the non-production of the forensic reports and/or digital evidence was not by itself fatal for the prosecution case nor had it created any suspicion about the truthfulness of the version given by the prosecution witnesses.

[16] In respect of issue (ii), the Court of Appeal found that the learned JC had erred in law in his reliance on s 13(1)(a) of the CPC because the offence of travelling to a foreign country for the commission of terrorist acts under s 130JA of the PC was not one of those listed in sub-s (1)(a). However, the Court of Appeal held that the said error was not fatal because there are other statutes ie ss 3(3) and 20(3) of the Police Act 1967, and ss 103 and 104 of the CPC which imposed a legal duty upon the appellant to report the information received.

THE APPEAL

[17] The sole issue for determination before this court was whether the appellant was legally bound to furnish the information concerned?

[18] To bring home the charge against the appellant, she must be shown to be legally bound to furnish information. 'Legally bound' is defined in s 43 of the PC as follows:

> 43 'Illegal', 'unlawful' and 'legally bound to do'
>
> The word 'illegal' or 'unlawful' is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for civil action.
>
> And in respect of the word 'illegal', a person is said to be 'legally bound to do' whatever it is illegal in him to omit.

[19] We referred to Dr Hari Singh Gour's comment in his book *Penal Law of India* (9th Ed, 1972) at p 231:

The test to see whether a person is 'legally bound' to give information to do anything else is not whether he is enjoined by the law to give such information or to do such thing but to see whether the omission to do so would be 'illegal' within the meaning of s 43, ie is an offence under the Code, or is prohibited by law or is such as to give rise to a cause of action for a civil action. Thus the test is a negative one.

[20] The above proposition was cited with approval by Ian Chin J in *Chiew Poh Kiong v Public Prosecutor* [2001] 4 MLJ 280; [2001] 7 CLJ 249. Applying the above test, it was contended by learned counsel for the appellant that it was not illegal for the appellant to omit to report the information received to her superior because s 13(1)(a) of the CPC only requires a person to furnish information in respect of offences specifically mentioned therein. Section 13(1)(a) reads as follows:

13 Public to give information of certain matters

(1) Every person aware:

(a) of the commission of or the intention of any other person to commit any offence punishable under the following sections of the Penal Code:
121, 121A, 121B, 121C, 122, 123, 124, 125, 126, 130, 143, 144, 145, 147, 148, 302, 304, 307, 308, 363, 364, 365, 366, 367, 368, 369, 372, 372A, 372B, 376, 376B, 377C, 377CA, 377E, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459and 460; or

(b) ...
shall in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, immediately give information to the officer in charge of the nearest police station or to a police officer or the nearest penghulu of the commission or intention or of the sudden, unnatural or violent death or of the finding of the dead body, as the case may be.

[21] At this juncture, it is pertinent to note that the provision has been amended by the Criminal Procedure Code (Amendment) Act 2016 (Act 1521) which came into force on 23 December 2016. The new s 13(1)(a) reads as follows:

13 Public to give information of certain matters

(1) Every person aware:

(a) of the commission of or the intention of any other person to commit any offence punishable under the Penal Code or any other written law;

(b) ...
shall in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, immediately give information to the officer in charge of the nearest police station or to a police officer or the nearest penghulu of the commission or intention or of the sudden, unnatural or violent death or of the finding of the dead body, as the case may be.

[22] The appellant was alleged to have committed the offence prior to the effective date of the new provision ie on 23 December 2016. It is trite that the new s 13(1)(a), which is in the form of substantive law does not apply retrospectively (see *Dalip Bhagwan Singh v Public Prosecutor* [1998] 1 MLJ 1; [1997] 4 CLJ 645). In our view, the new provision of s 13(1)(a) of the CPC which casts a duty on the public to give information about the commission of an offence punishable under the Penal Code or any other written law, is inapplicable to the case against the appellant.

[23] The old s 13(1)(a) of the CPC corresponds with s 39 of the Indian Criminal Procedure Code 1973 ('the CrPC') which reads as follows:

> 39 Public to give information of certain offences
>
> (1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code, (45 of 1860), namely:
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> (i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);
>
> (ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);
>
> (iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);
>
> (iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc);
>
> (v) sections 302, 303 and 304 (that is to say, offences affecting life);
>
> (va) section 364A (that is to say, offence relating to kidnapping for ransom, etc);
>
> (vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);
>
> (vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);
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> (viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc);
>
> (ix) sections 431 to 439*, both inclusive (that is to say, offences of mischief against property);*
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> (x) sections 449 and 450 (that is to say, office of house-trespass);
>
> (xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house-trespass); and
>
> (xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes) shall, in the absence of

any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

[24] The Mumbai High Court in the case of *Dr Satyasaheel Nandlal Naik vs State of Maharashtra And Another* [1996] CriLJ 1463, had occasion to consider the issue whether a doctor was obliged to inform the police when he had treated a patient who died in a motor vehicle accident due to rash and negligent driving, which offences were punishable under ss 279, 337, 338 or 304A of the Indian Penal Code ('the IPC'). The court held that there was no statutory obligation on a citizen to inform the police about the commissions of other offences that were not mentioned in s 39 of the CrPC. Therefore, the prosecution against the doctor for failure to inform about the accident to the police could not stand.

[25] In the same vein, the Andhra Pradesh High Court in the matter of *Akbaruddin Owaisi v The Government of Andhra Pradesh* [2014] CriLJ 2199 held as follows:

26. Every citizen who has knowledge of the commission of cognizable offence has the duty to lay the information before the police under Section 39 CrPC, (*State of Gujarat v Anirudhsing* [1997] 6 SCC 514), which obligates every person, who is aware of the commission of the offences mentioned in that Section, to give information to the nearest Magistrate or Police Officer. There is no statutory obligation on a citizen to inform the police about offences other than those mentioned in s 39 CrPC, (*Dr Satyasaheel Nandlal Naik v State of Maharashtra* [1996] CrilJ 1463), as it merely casts a duty and an obligation to report offences mentioned therein, omission to discharge which is made penal. The said Section has been designed with the purpose of securing information relating to the commission of an offence with all expedition so that investigation should ensue. Once the information, relating to the commission of the offence has actually reached the Police Station the requirements of s 39 CrPC. are fully satisfied. Every eye-witness or every person who is in the know of the circumstances relating to an offence is not expected, thereafter, to go to the Police Station to give a report of what he saw. (*State of Maharashtra v Dashrath Lahanu Kadu* [1972] (45) Bombay Law Reporter 450).

[26] So too here. The old s 13(1)(a) of the CPC imposes a duty on every person, including the appellant, who is aware of the commission of the offence enumerated in that section, to give information to the nearest police station or police officer or *penghulu*. Once there is an omission, such persons become criminally liable. Certain offences are mentioned in s 13(1)(a) of the CPC, but it does not refer to the offence of travelling to a foreign country to commit terrorist acts under s 130JA of the PC, with which we are concerned here. Thus, the appellant was not obliged to report the information concerned.

[27] It is a well-established principle of statutory interpretation that Parliament is not presumed to have intended to limit or interfere with the personal liberty of a citizen, unless it indicates this intention in clear, unmistakable and unambiguous terms. It is trite that criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. Therefore, no act or omission is to be deemed criminal unless it is clearly made so by words of the statute concerned (see *Maxwell on Interpretation of Statutes* (12th Ed) at pp 239–240 and *Craies on Statute Law* (7th Ed) at p 529).

[28] In our considered view, unless the contrary intention appears, Parliament could not have intended under the old s 13(1)(a) of the CPC to impose a legal obligation on persons to furnish information in respect of the possible commission of s 130JA offence. On that score, we were in agreement with the Court of Appeal that the learned JC had erred in his reliance on the old s 13(1)(a) of the CPC. In the light of above discussion, it was our considered view that the prosecution of the appellant for non-reporting the possible commission of s 130JA offence by SP1 and 'Abu Kedah', under s 130M of the Penal Code was unsustainable in law.

[29] Learned DPP vehemently argued that there are other statutes that impose legal obligation on the appellant to furnish information eg ss 3(3) and 20(3) of the Police Act 1967 which read:

> 3 Constitution of the Police Force
>
> (1) ...
>
> (2) ...
>
> (3) The Force shall subject to this Act be employed in and throughout Malaysia (including the territorial waters thereof) for the maintenance of law and order, the preservation of the peace and security of Malaysia, the prevention and detection of crime, the apprehension and prosecution of offenders and the collection of security intelligence.
>
> 20 General duties of police officer
>
> (1) Every police officer shall perform such duties and exercise such powers as are by law imposed or conferred upon a police officer, and shall obey all lawful directions in respect of the execution of his offence which he may from time to time receive from his superior officers in the Force.
>
> (2) ...
>
> (3) Without prejudice to the generality of the foregoing provisions or any other law, it shall be the duty of a police officer to carry out the purposes

mentioned in subsection 3(3); and he may take such lawful measures and do such lawful acts as may be necessary in connection therewith, including —

(a) apprehending all persons whom he is by law authorised to apprehend;

(b) processing security intelligence;

(c)–(m)

[30] In support of her submission, learned DPP cited the following passage of the Court of Appeal's grounds of judgment:

> [14] Pada pandangan kami perayu telah dengan sengaja tidak memaklumkan pegawai atasannya mengenai maklumat yang diadukan dalam pertuduhan berkenaan. Harus dicatatkan juga bahawa perayu pernah ditegur dan dinasihatkan oleh pegawai atasan polis dahulu supaya tidak melibatkan diri dengan hal-hal yang berkaitan IS. Perayu semesti dan seharusnya menyedari seriusnya perkara yang ditegur itu dan betapa pentingnya maklumat yang diterima dan diketahuinya itu dalam konteks tanggungjawab tersebut. Sebagai anggota polis dan selaras dengan tanggungjawab yang dikenakan kepada semua anggota polis di bawah s 3(3), s 20(1) dan (3), Akta Polis 1967 dan s 103/104 KPJ, perayu dengan jelas terikat dengan perundangan statutori itu untuk memaklumkan maklumat berkenaan yang ternyata terjatuh dalam jaringan s 130JA kepada pihak atasannya. Kami dengan itu menolak hujahan peguam tentang isu ini.

[31] With the greatest respect, the Court of Appeal was wrong in affirming the decision of the learned JC. It must be borne in mind that the definition of 'legally bound', as we had alluded to earlier in this judgment, is a negative test and the word 'illegal' is applicable to everything which is an offence or which is prohibited by law or which furnishes ground for a civil action. In this instant appeal case, the prosecution adduced no evidence concerning the appellant's scope of work. There was also no evidence on record to show that the appellant was directed to gather intelligence on terrorist related activities and to transmit the same to her superiors. In our considered view, the appellant was charged and convicted of an offence not known to law.

CONCLUSION

[32] For the foregoing reasons, we were of the opinion that the Court of Appeal had committed a serious error of law warranting appellate intervention. We were firmly of the view that the conviction against the appellant was wrong and unsustainable in law and must be quashed. We, therefore, allowed the appellant's appeal and set aside the conviction and sentence imposed. Consequently, the appellant was acquitted and discharged forthwith. So ordered.

A *Appeal allowed, appellant's conviction and sentence set aside and acquitting and discharging her of the charge under s 130M of the Penal Code.*

Reported by Ashok Kumar

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